No. 117 ~~1970~~

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

DENNIS COATES, et al.,
Appellants,

v.

CITY OF CINCINNATI,
Appellee.

On Appeal from the Supreme Court of Ohio

JURISDICTIONAL STATEMENT

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March, 1970

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JURISDICTIONAL STATEMENT

This is an appeal from a decision of the Supreme Court of Ohio affirming the convictions of Appellants, Dennis Coates, James Hastings, Wendell Saylor, Arnold Adams and Clifford Wyner, in the Hamilton County Municipal Court at Cincinnati, Ohio. This Statement is submitted to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Supreme Court of Ohio is reported in 21 Ohio St. 2d 66 and is attached hereto as Appendix A.

JURISDICTION

This litigation originated with the arrests and subsequent convictions of the Appellants for violations of the Loitering Ordinance of the City of Cincinnati. In a four to three opinion, the Supreme Court of Ohio specifically ruled on January 28, 1970 that the State (Municipal) legislation did not violate the First and Fourteenth Amendments to the Constitution of the United States. Notice of Appeal was filed in the Supreme Court of Ohio on February 17, 1970. Jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1257 (2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Whitney* v. *California,* 274 U.S. 357, 360-1; *Raley* v. *Ohio,* 360 U.S. 423, 436.

STATUTES INVOLVED

The Code of Ordinances of the City of Cincinnati provide:

> Section 901-L6. Loitering at Street Corners.
>
> It shall be unlawful for three or more persons to assemble, except at a public meeting of citizens, on any of the sidewalks, street corners, vacant lots, or mouths of alleys, and there conduct themselves in a manner annoying to persons passing by, or occupants of adjacent buildings. Whoever violates any of the provisions of this section shall be fined not exceeding fifty dollars ($50.00), or be imprisoned not less than one (1) nor more than thirty (30) days or both.

QUESTION PRESENTED

Constitutionality of the subject ordinance is the question presented. Overbreadth and vagueness are the features of these cases. The chilling effect of the language of the whim-

sically labeled "Loitering Ordinance" has been condemned by widely scattered Ohio courts. Those courts declared the language violative of First and Fourteenth Amendment concepts or they found from the facts of the cases that convictions could not be justified.

STATEMENT

Applicability of the First and Fourteenth Amendments to the United States Constitution were raised at each stage of the proceedings. In the trial court it was by appellant Coates at the beginning of the case by motion requesting dismissal under the First and Fourteenth Amendments to the United States Constitution, Bill of Exceptions, Coates, page 2 (Appendix B). In the same trial court similar raising of the constitutional question by appellants Hastings, Saylor, Adams and Wyner is shown at page 2 of their Bills of Exceptions (Appendix C). In the intermediate Court of Appeals for the First Appellate District of Ohio the federal questions were asserted by Question No. 1 in the Assignments of Error and Brief (Appendix D hereto). In the Supreme Court of Ohio the federal questions were presented as Question No. 1 in Appellants' brief and were specifically decided in both majority and dissenting opinions.

In the cases at bar the four judges of the Ohio Supreme Court who affirmed the constitutionality of making an annoyance (by men) a crime did not have a record of the facts in the cases. Earlier, the Court had held that making an annoyance (by dogs) a crime was unconstitutional because such a test was vague, *Columbus* v. *Becher,* 173 Ohio St. 197. In that case the Court had asked, "What degree of noise must there be to constitute an annoyance? Are noises included that would be annoying to a few sensitive people but would not disturb others?" (page 199). The Supreme Court of Ohio, in the perhaps different at-

titudes which controlled its philosophies in 1962, concluded its opinion in the *Columbus* v. *Becher* case by lapsing into verse (page 200),

Dogs will howl and cats will yowl
When placed in congregation.
These grating sounds may oft result
In human aggravation.
Laws passed to curb such pesky noise
Should fit the situation
And be so phrased in artful ways
To cause no obfuscation.
In other words, the laws so passed
Must plainly be effective
Inaptly framed, they lack the force
To meet their planned objective.

Not humorous to participants in assemblies concerned with racial problems, the legislative language stands as a symbol of oppression to them without reference to Ohio's protective interpretation for animals (Appendix E). Other Ohio courts have also repudiated criminal enactments using "annoyance" as a test of criminal activity in the case of Halloween celebrants, businessmen and, on the other side, possible Socialist sympathizers. In the cases appealed here, union pickets and a college student dissenter have been added to those who can become convicted criminals because they "annoy".

THE QUESTIONS ARE SUBSTANTIAL

In an apparent backlash at the emergence of First and Fourteenth Amendment rights as meaningful enactments the Ohio Supreme Court has changed the clear trend of Ohio law that had, throughout the state, held the subject type legislation unconstitutional.

Only a year and a half before this case the same judge

who wrote this opinion (*Cincinnati* v. *Coates*), Honorable J. J. P. Corrigan, had written,

"The right of individuals to assemble and associate together is guaranteed by both the United States and Ohio Constitutions, and any legislative attempt to abrogate that right, even though motivated ostensibly by a desire to insure peace and order in the city of Cleveland, cannot stand. Gitlow v. People (1924), 268 U.S. 652; Thornhill v. Alabama (1940), 319 U.S. 88; Cantwell v. Connecticut (1940), 310 U.S. 296; Edwards v. South Carolina (1963), 372 U.S. 229; Deer Park v. Schuster (Hamilton County Common Pleas Court, 1940), 16 O.O. 485, 30 Ohio Law Abs. 466; Toledo v. Sims, 14 O.O. (2d) 66, 84 Ohio Law Abs. 476 (Toledo Municipal Court, 1960).

In addition to the above constitutional weakness, it is apparent that the city of Cleveland's disorderly assembly ordinance also fails to apprise an individual that his conduct is proscribed by law. It is therefore in conflict with the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution. United States v. Cohen Grocery Co. (1921), 255 U.S. 81; Connally v. General Construction Co. (1926), 269 U.S. 385; Lanzetta v. New Jersey (1939), 306 U.S. U.S. 451; United States v. Harriss (1954), 347 U.S. 612; Ashton v. Kentucky (1966), 384 U.S. 195; Cleveland v. Baker (Court of Appeals, 1960), 83 Ohio Law Abs. 502. As stated in Connally v. General Construction Co., 269 U.S. 385, at page 391:

'That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common in-

telligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law. * * *'

* * *

As it is written, the disorderly assembly ordinance could be used to incriminate nearly any group or individual. With little effort, one can imagine many "noisy and boisterous" **ASSEMBLAGES WHICH, AT VARIOUS TIMES, MIGHT ANNOY SOME PERSONS IN THE CITY OF CLEVELAND.** Anyone could become an unwitting participant in a disorderly assembly, and suffer the penalty consequences. It has been left to the police and the courts to decide when and to what extent ordinance Section 13.1124 is applicable. Neither the police or a citizen can hope to conduct himself in a lawful manner if an ordinance which is designed to regulate conduct does not lay down ascertainable rules and guidelines to govern its enforcement. This ordinance represents an unconstitutional exercise of the police power of the city of Cleveland, and is therefore void." (Capitalization added.)

This was in *Cleveland* v. *Anderson,* 13 Ohio Appeals 2d 83, 88-90 (1968). That case involved a benefit for a Socialist inclined newspaper. The several million people of the Cleveland area are now subject to persecution for unpopular associations, as *Cincinnati* v. *Coates* interprets the law.

The Hamilton County, Ohio, Common Pleas Court is the general jurisdiction court for the Cincinnati area population (and its decisions are supposed to set precedents for the Hamilton County Municipal Court in which these appellants were convicted) ; in 1940 it held Halloween celebrants were improperly charged by a municipal ordinance using the language under attack here — the legislation was

declared unconstitutional. *Deer Park* v. *Schuster,* 16 Ohio Opinions 485, 30 Ohio Law Abs. 466.

Toledo, Ohio, area businessmen were relieved of the likelihood of prosecution for annoying passers-by when, in 1960, the Municipal Court of that city held the annoyance test was unconstitutional and the learned judge pointed out that the 1774 "loiterers" on Duke of Gloucester Street in Williamsburg, Virginia, including Patrick Henry, Thomas Jefferson, Peyton Randolph and others could not have survived the annoyance to Governor Dunsmore and his constables if they (the constables) had used the "annoying to persons passing by" standard. *Toledo* v. *Sims,* 14 Ohio Opinions (2d) 66, 84 Ohio Law Abs. 476.

More recently, it may be contemplated, Franklin D. Roosevelt, Alfred M. Landon or Martin Luther King might not have been free to assemble with those of their choice in Cleveland, Toledo, Cincinnati or Deer Park if the doctrine of *Cincinnati* v. *Coates* was or is the law in Ohio.

Negroes generally believe the Cincinnati Loitering Ordinance is a thing of substantial interest to them and their aspirations to be accorded equal treatment in the community. The National Advisory Commission on Civil Disorders disclosed the importance of Cincinnati's Loitering Ordinance when it reported on the use of the legislation (Report of the National Advisory Commission on Civil Disorders, April, 1968, The New York Times Edition, E. P. Dutton and Co., Inc., pages 47-50). The case referred to in that report was terminated in an unreported decision which reversed the conviction. *Cincinnati* v. *Lathan Johnson,* Hamilton County Ohio Court of Appeals, case number 10532, August, 1968. The importance of the Loitering Ordinance to the citizens of the Cincinnati area is perhaps fairly reflected by the report of the reversal of the Lathan Johnson case which appeared in

the Cincinnati Post and Times Star, August 18, 1968 (Appendix E).

Columbus, Ohio, area residents will now be in doubt as to both the quantity and quality of annoyance which may safely be created. Dogs may bark (freely?) under the rule of *Columbus* v. *Becher,* 173 Ohio St. 197, but if the people travel to Cincinnati, Cleveland, Toledo or Deer Park and congregate with another two or more persons, they should ascertain in advance just what level of their conduct may prove to be annoying to someone in any of those municipalities.

The questions raised by this appeal are substantial for all the citizens of Ohio. Additionally, other states have similar problems. It was necessary for a three judge federal court to eliminate Louisville, Kentucky's oppressive legislation in an opinion which, in turn, refers to many other situations in which municipalities had not understood the holdings in *N.A.A.C.P.* v. *Button,* 371 U.S. 415, *Terminiello* v. *Chicago,* 337 U.S. 1, and *Ashton* v. *Kentucky,* 384 U.S. 195. The decision is reported in *Baker* v. *Bindner,* 274 Fed. Supp. 658 (1967).

We urge that The Supreme Court of Ohio has upheld legislation which is unconstitutional because of vagueness and overbreadth as described in *Lanzetta* v. *State of New Jersey,* 306 U.S. 451, Harvard Law Review, February, 1970, page 844, and which lends itself to ready use by officials against those deemed to merit their displeasure, *Thornhill* v. *State of Alabama,* 310 U.S. 88, and should be reversed.

Respectfully submitted,

ROBERT R. LAVERCOMBE
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Cincinnati, Ohio 45202
Counsel for Appellants

APPENDIX A

OPINION OF STATE COURT

CITY OF CINCINNATI, APPELLEE, *v.* COATES, APPELLANT.
CITY OF CINCINNATI, APPELLEE, *v.* HASTINGS, APPELLANT.
CITY OF CINCINNATI, APPELLEE, *v.* SAYLOR, APPELLANT.
CITY OF CINCINNATI, APPELLEE, *v.* ADAMS, APPELLANT.
CITY OF CINCINNATI, APPELLEE, *v.* WYNER, APPELLANT.

[Cite as Cincinnati v. Coates, 21 Ohio St. 2d 66.]

Criminal law—Ordinance prohibiting assemblage on sidewalks annoying persons passing by—Not vague or uncertain—Sufficiency of affidavit charging offense.

A city ordinance making it "unlawful for three or more persons to assemble * * * on * * * sidewalks * * * and there conduct themselves in a manner annoying to persons passing by" is not vague or uncertain but is, on its face, sufficiently clear to inform a person of common intelligence of the nature of the acts prohibited by the ordinance.

(Nos. 69-116, 69-117, 69-118, 69-119 and 69-120—Decided January 28, 1970.)

APPEALS from the Court of Appeals for Hamilton County.

Mr. William A. McClain, city solicitor, *Mr. Ralph E. Cors* and *Mr. A. David Nichols*, for appellee.

Messrs. Beckman, Lavercombe, Fox & Weil and *Mr. Bernard C. Fox*, for appellants.

CORRIGAN, J. We are without the advantage of a bill of exceptions in these appeals from convictions in the Hamilton County Municipal Court for violating Section

901-L6 of the Cincinnati Code of Ordinances. The Court of Appeals for Hamilton County affirmed the convictions, and the causes are before this court pursuant to the allowance of motions to certify the records.

The ordinance in question provides:

"It shall be unlawful for three or more persons to assemble, except at a public meeting of citizens, on any of the sidewalks, street corners, vacant lots, or mouths of alleys, and there conduct themselves in a manner annoying to persons passing by, or occupants of adjacent buildings. Whoever violates any of the provisions of this section shall be fined not exceeding fifty dollars ($50.00), or be imprisoned not less than one (1) nor more than thirty (30) days or both."

With one exception, the separate affidavits upon which the warrants of arrest were based charged that each defendant "being one of a group of more than two persons assembled on the sidewalk on or about April 11, 1968, at and in the city of Cincinnati, Hamilton County and state of Ohio, did unlawfully conduct himself in a manner annoying to persons passing by contrary to and in violation of Section 901-L6 of the Code of Ordinances of the City of Cincinnati."

In case No. 69-116, the affidavit charged defendant "on Dec. 7, 1967, did unlawfully loiter on the sidewalk at 500 Main with 6 other persons and there did conduct himself in a manner annoying to persons passing by * * *."

We are urged to declare this ordinance to be in violation of the First and Fourteenth Amendments to the Constitution of the United States and Section 3, Article I of the Ohio Constitution, for the reasons that it is vague and imprecise as to what conduct is proscribed. A claim is also made that the affidavits do not contain all the material elements to charge an offense under said ordinance.

The First Amendment to the U. S. Constitution provides, in part:

"Congress shall make no law * * * abridging * * * the right of the people to peaceably assemble * * *."

This right of assembly, granted by both state and federal constitutions, contemplates that it be asserted and enjoyed in a peaceable manner. The right delineated certainly does not include the contravening of other rights of other persons. The affidavits under scrutiny here charge assembly and a course of conduct "* * * annoying to persons passing by * * *." Without a bill of exceptions we do not know what the conduct was which was considered annoying.

Could it have been the interrupting or interfering with the free, unimpeded passage, the use of and enjoyment of the public sidewalk or street by other persons?

Could it have been an intrusion upon the privacy of persons using the public sidewalk or street by accosting and seeking to deliver to such persons written or printed messages, papers, pamphlets, cards or books?

Could it have been an intrusion upon the privacy of persons to impart an oral message by blocking or otherwise seeking to detain persons in the free use of the public sidewalks or streets?

On the state of the record before us, we will go to our rewards without knowing.

As to the contention that this ordinance is imprecise, vague and indefinite, we do not agree. Certainly, crime must be defined with certainty and definiteness, which requirements are elements of due process. Persons charged with violations of penal statutes or ordinances are not required to speculate as to the meaning of such legislation. If the provisions of an ordinance are so vague that persons of common intelligence must guess as to their

meaning, then an essential of due process is lacking. *Connally* v. *General Construction Co.*, 269 U. S. 385.

The ordinance prohibits, *inter alia*, "conduct * * * annoying to persons passing by." The word "annoying" is a widely used and well understood word; it is not necessary to guess its meaning. "Annoying" is the present participle of the transitive verb "annoy" which means to trouble, to vex, to impede, to incommode, to provoke, to harass or to irritate.

We conclude, as did the Supreme Court of the United States in *Cameron* v. *Johnson*, 390 U. S. 611, 616, in which the issue of the vagueness of a statute was presented, that the ordinance "clearly and precisely delineates its reach in words of common understanding. It is a 'precise and narrowly drawn regulatory statute [ordinance] evincing a legislative judgment that certain specific conduct be * * * proscribed."

Although we conclude that the meaning of the words used in the ordinance is clear and that the standard of conduct which it specifies is not dependent upon each complainant's sensitivity, we are unable to apply it to the facts in this case because of the absence of facts in the record before us.

We find no merit in defendants' claim that the affidavits herein do not contain all the material elements to charge an offense under this ordinance.

The judgments of the Court of Appeals are affirmed.

Judgments affirmed.

TAFT, C. J., MATTHIAS and SCHNEIDER, JJ., concur.
O'NEILL, HERBERT and DUNCAN, JJ., dissent.

HERBERT, J., dissenting. There being no bill of exceptions in these cases, the sole and proper question raised by these appeals is the constitutionality, on its face, of

Section 901-L6 of the Cincinnati Code of Ordinances. It appears to be well established that the question of the constitutionality of a statute or ordinance is judicially cognizable under these circumstances. *Belden* v. *Union Central Life Ins. Co.* (1944), 143 Ohio St. 329, 55 N. E. 2d 629; *Blacker* v. *Wiethe* (1968), 16 Ohio St. 2d 65, 242 N. E. 2d 655. *Cf. Castle* v. *Mason* (1915), 91 Ohio St. 296, 110 N. E. 463; *State, ex rel. Herbert,* v. *Ferguson* (1944), 142 Ohio St. 496, 52 N. E. 2d 980; *State, ex rel. Speeth,* v. *Carney* (1955), 163 Ohio St. 159, 126 N. E. 2d 449.

Defendants were convicted of violating Section 901-L6 of the Cincinnati Code of Ordinances, which provides:

"It shall be unlawful for three or more persons to assemble, *except at a public meeting of citizens,* on any of the sidewalks, street corners, vacant lots, or mouths of alleys, and there conduct themselves in a manner annoying to persons passing by, or occupants of adjacent buildings. Whoever violates any of the provisions of this section shall be fined not exceeding fifty dollars ($50.00), or be imprisoned not less than one (1) nor more than thirty (30) days or both." (Emphasis added.)

Since the syllabus announced by the majority does not contain all of the pertinent language of the ordinance under consideration, I am respectfully constrained to characterize it as dicta. Therefore, this dissent should not be construed as necessarily encompassing that syllabus.

The defendants claim that the ordinance violates the Constitution of the United States in that it is vague, indefinite and imprecise as to what conduct is prohibited.

The United States Supreme Court, in the case of *United States* v. *Petrillo* (1947), 332 U. S. 1, 91 L. Ed. 1877, stated that while the Constitution of the United States does not require impossible standards of certainty in statutes defining crimes, the test is whether or not the law is so

designed that persons of ordinary intelligence, who would be law abiding, can determine with reasonable precision what conduct it is their duty to avoid. *Connally* v. *General Construction Co.* (1926), 269 U. S. 385, 70 L. Ed. 322; *Cramp* v. *Board of Public Instruction* (1961), 368 U. S. 278, 7 L. Ed. 2d 285; *Winters* v. *New York* (1948), 333 U. S. 507, 92 L. Ed. 840. The rule is also well settled that penal laws must be strictly construed and are to be interpreted strictly against the state and liberally in favor of the accused. See *Mentor* v. *Giordano* (1967), 9 Ohio St. 2d 140, 224 N. E. 2d 343; *State* v. *Conley* (1947), 147 Ohio St. 351, 71 N. E. 2d 275; *State* v. *Meyers* (1897), 56 Ohio St. 340, 47 N. E. 138; *Turner* v. *State* (1853), 1 Ohio St. 422; *Hirn* v. *State* (1852), 1 Ohio St. 15.

Reading the instant ordinance in accordance with those rules of construction, and even assuming that what will constitute "annoying" conduct is sufficiently definite so as to be reasonably understood by all men who would be law abiding citizens, it is apparent that conduct which, in fact, is "annoying," is not unlawful if it is conduct at a "public meeting of citizens." Thus, the threshold question before us should be whether the ordinance is sufficiently definite and precise to inform a group of three or more citizens that their particular gathering is or is not such a "meeting" and, hence, is or is not excepted from the operation of the ordinance.

There appears to be little doubt that the language, "except at a public meeting of citizens," was written into the ordinance to offset potential claims that the ordinance affronted the constitutional right of peaceful assembly. The United States Supreme Court has spoken often in this area and has declared that stricter standards of permissible statutory vagueness should be applied to

any statute or ordinance which has a potentially inhibiting effect upon rights guaranteed by the First Amendment to the Constitution of the United States. *Smith* v. *California* (1959), 361 U. S. 147, 4 L. Ed. 2d 205; *Cramp* v. *Board of Public Instruction, supra* (368 U. S. 278); *Winters* v. *New York, supra* (333 U. S. 507); *Thornhill* v. *Alabama* (1940), 310 U. S. 88, 84 L. Ed. 1093; *Scull* v. *Virginia, ex rel. Committee on Law Reform and Racial Activities* (1959), 359 U. S. 344, 3 L. Ed. 2d 865; *Stromberg* v. *California* (1931), 283 U. S. 359, 75 L. Ed. 1117; *Wright* v. *Georgia* (1963), 373 U. S. 284, 10 L. Ed. 2d 349. In those cases, the United States Supreme Court was concerned with "the rule that a generally worded statute which is construed to punish conduct which cannot constitutionally be punished is unconstitutionally vague to the extent that it fails to give adequate warning of the boundary between the constitutionally permissible and the constitutionally impermissible applications of the statute." *Wright* v. *Georgia, supra,* 292.

Even if it is assumed that conduct which is reasonably calculated to be "annoying" is well known to reasonable men who would be law abiding citizens, the ordinance nevertheless fails to define the boundary between that assemblage which will constitute a "public meeting of citizens" and that which will not be considered such a meeting. For example, do only groups which have licenses constitute a public meeting? Must some form of notice be given before a meeting may be considered a public meeting? Who may convene a public meeting? Is a public meeting one held only in a public place? Must a meeting be held during certain hours in order to be "public"? May a public meeting be called only for certain purposes? Is it clear that an assemblage of three or more citizens on a public sidewalk can not constitute a public

meeting of those citizens? In short, although the ordinance clearly excepts "annoying" behavior "at a public meeting of citizens" there is no indication as to what conduct was included in the very words which announce that exception.

In my opinion, where an ordinance inflicts a criminal penalty for certain conduct, but excepts such conduct from its operation under certain circumstances, both the proscribed conduct and the excepting circumstances must be designated with sufficient precision to meet constitutional requirements regarding vagueness and uncertainty. The failure of the ordinance under consideration to meet this test renders it unconstitutional on its face.

DUNCAN, J., concurs in the foregoing dissenting opinion.

APPENDIX B

BILL OF EXCEPTIONS – COATES

HAMILTON COUNTY MUNICIPAL COURT
STATE OF OHIO

No. 1052

CITY OF CINCINNATI,

Plaintiff,

vs.

DENNIS COATES,

Defendant.

BILL OF EXCEPTIONS

BE IT REMEMBERED that upon the trial of this cause commencing on March 27, 1968 before the Honorable Rupert A. Doan and continuing on March 29, 1968 before the Honorable Joseph A. Luebbers, Judges of the Hamilton County Municipal Court, the following proceedings were had:

APPEARANCES:

On behalf of Plaintiff:
Norbert A. Nadel, Esq.
Assistant City Prosecutor
(Hearing March 27, 1968)

A. David Nichols, Esq.
Assistant City Prosecutor
(Hearing March 29, 1968)

On behalf of Defendant:
Bernard C. Fox, Esq.
of
Beckman, Lavercombe, Fox & Weil

[2] MARCH 27, 1968
10:30 A.M.

MR. NADEL: This is City of Cincinnati vs. Dennis Coates and all witnesses, Your Honor.

THE COURT: As I understand, you are not ready to proceed to trial?

MR. NADEL: That's right.

THE COURT: But Mr. Fox has matters to present to the Court?

MR. NADEL: That is correct, Your Honor.

THE COURT: That we will consider now. All right.

MR. FOX: First off, I'd like to make an oral motion to dismiss on the basis that the ordinance in question violates the First Amendment of the United States Constitution, and Section 3, Article I of the Ohio Constitution, Due Process, and the Fourteenth Amendment of the United States Constitution. I'll just briefly give you a couple of cases that I have.

(Argument by Mr. Fox and Mr. Nadel, and the Court then took the motion to dismiss under submission pending handing down of a ruling in a similar case now pending before an appeal court.)

MR. FOX: I'd like to file a motion to quash [3] also which raises a different point, and maybe I'm the eternal optimist; maybe the Court will rule in my favor on this. We are moving to quash on the basis that the affidavit doesn't charge any violation of any ordinance of the City of Cincinnati, whether it's constitutional or otherwise (handing document to the Court.)

(Counsel for defendant discussed the motion to quash with the Court, following which the Court overruled the motion.)

MR. FOX: If I can bother you once more, I'll file a demurrer because I'm never sure which you should file, a motion to quash or a demurrer (handing document to Court.)

(Counsel for defendant discussed the demurrer with the Court, following which the Court overruled the demurrer.)

THE COURT: Then, as I understand it, Friday we will proceed with the testimony, proceed with the trial, and we will withhold the matter of your motion and withhold the matter of the decision, if it should get to that point, the decision on the merits of the case.

(Thereupon the trial was adjourned until Friday, March 29, 1968, at 9:00 A.M.)

[4] And thereafter, on FRIDAY, MARCH 29, 1968, before the HONORABLE JOSEPH A. LUEBBERS, one of the Judges of the Cincinnati Municipal Court, the above-captioned matter came on for trial on the affidavit of Officer Thomas J. Martin, charging violation of Section 901-L6 of the Ordinances of the City of Cincinnati.

APPEARANCES:

On behalf of Plaintiff:
A. David Nichols, Esq.
Assistant City Prosecutor

On behalf of Defendant:
Bernard J. Fox, Esq.
of
Beckman, Lavercombe, Fox & Weil

THE COURT: Do I understand this is a short case, Mr. Fox?

MR. FOX: That's what I am told.

THE COURT: We usually take those at the end of the docket, so will do that this morning, to be sure, because we have some other matters.

MR. FOX: No dispute over the facts, as far as I know.

THE COURT: How many witnesses?

[5] MR. FOX: I have only one defendant; I doubt I will call him, unless something surprises me.

MR. NICHOLS: We have four witnesses.

MR. FOX: I assume they will be substantially the same.

THE COURT: Let's proceed.

MR. NICHOLS: What is the plea?

MR. FOX: I am going to renew my motion, I think I will renew them, just briefly.

THE COURT: What is the charge here?

MR. NICHOLS: Charge under 901-L6, loitering section of the City Ordinances.

MR. FOX: Before proceeding with the testimony, I want to renew first my motion to dismiss, on the grounds that the ordinance itself is unconstitutional, violates the Fourteenth Amendment and the First Amendment to the United States Constitution and the Ohio Consitution, Section 2 of Article III.

I am not going to argue the question before the Court, in view of the Lathan Johnson case I would suggest this motion be taken under submission until that's decided; they are going to argue that within a matter of a couple of weeks.

MR. NICHOLS: In fact, the specific motions on this

specific case, as set out by Mr. Fox, I understand have [6] already been before Judge Doan of the Municipal Court; is that right?

MR. FOX: That's right.

MR. NICHOLS: Therefore I think the motions should be in abeyance at this time inasmuch as he already has the jurisdiction.

THE COURT: The motion in this case?

MR. NICHOLS: Yes.

MR. FOX: He has not decided it, so I want to renew it.

THE COURT: He has not ruled on the motion?

MR. FOX: He said he would hold it in abeyance until the Court of Appeals decides. I suggest we do the same.

THE COURT: We will do the same.

MR. FOX: I also filed a motion to quash on the basis the affidavit does not state a crime. The particular statute involved prescribes assembling with three or more persons, and the affidavit says that Coates did unlawfully loiter on the sidewalk. Now, loitering and assembling are not synonomous.

(Argument by Mr. Fox)

THE COURT: What do you have to say, Mr. Nichols?

[7] MR. NICHOLS: Your Honor, with regard to the motion to quash, I believe that was also before Judge Doan in this same manner. At that time I believe it was overruled, Your Honor.

MR. FOX: I think that's right.

THE COURT: Let's see the affidavit. (The Court examined the affidavit.)

MR. NICHOLS: I would say, Your Honor, inasmuch as the motion has been before one member of the Mu-

nicipal Bench, that he has already ruled, that brings to conclusion the question, and it is a final order. Under the circumstances, the question in this case from which Mr. Fox on behalf of the defendant may appeal therefore is moot, as appears now, other than for his purposes for the record.

MR. FOX: I just want to be sure it is in.

THE COURT: I presume it is made for the purpose of the record. Based on that, I don't think I have to rule on it at all, it's been ruled on.

MR. FOX: I want to be sure.

THE COURT: All right. Well, so then it's already been overruled.

MR. NICHOLS: If I may, Your Honor, is this not a correct statement, Mr. Fox — that the motions have already been ruled on?

[8] MR. FOX: Yes, there is no question about that. I never know what is going to happen in the Court of Appeals, and we will raise it here, they may say I should have.

THE COURT: For the purpose of the record, let the record show in the previous hearing this motion was overruled.

MR. FOX: That's all the motions I have.

THE COURT: All right.

MR. FOX: Is it my understanding, Your Honor, you are following this determination by Judge Doan and in all previous matters in regard to the motion?

THE COURT: That's right, exactly right.

MR. NICHOLS: What is the plea?

MR. FOX: Not guilty.

THE COURT: Not guilty. Raise your right hands to be sworn.

(All witnesses sworn.)

THE COURT: Is there a jury waiver?

MR. FOX: Yes, I have one (handing jury waiver to the Court.)

THE COURT: All right, Mr. Coates, you want the jury waived, and you want the case to be heard here by the Court, is that correct?

THE DEFENDANT: Yes.

(Testimony offered on behalf of plaintiff.)

[9] THE COURT: You have evidence?

(Argument by Mr. Fox and by Mr. Nichols.)

THE COURT: The finding of the Court is guilty. Ever been arrested before?

THE DEFENDANT: No.

THE COURT: What do you do?

THE DEFENDANT: I am a student.

(Further questioning by the Court.)

THE COURT: Anything further, Counselor?

MR. FOX: How is the Court going to proceed? Are you going to overrule the motion to dismiss or are you going to hold the whole thing in abeyance and come back for sentence? It might be just as well to overrule it even though it is submitted to Judge Doan, to overrule our new motion to dismiss, get the sentencing and everything out of the way. We are going to appeal.

THE COURT: I think that might be the —

MR. FOX: Rather than come back and forth.

THE COURT: As long as you are going to, I think that's the better way, too, otherwise it is just going to delay it and muddy up the waters.

MR. FOX: Let me say something further about Mr. Coates. (Statement of Mr. Fox)

THE COURT: The Court feels that there is no [10] objection to demonstration as long as it confines itself within the scope of the law, and this did not.

MR. FOX: Well, I agree it might violate some of these, but not the one –

THE COURT: It is the sentence of the Court $50.00 and costs, one year's probationary, informal probationary period. Any kind of difficulty within the year would be violation of your probation, it means you come back here and be subject to thirty days in the workhouse.

MR. FOX: May we have a stay at this time?

THE COURT: How long do you need? Thirty days?

MR FOX: I guess that gives me enough time.

THE COURT: The 29th – same bond.

AND THE FOREGOING WAS ALL OF THE PROCEEDINGS RELATIVE TO THE MOTIONS OF THE DEFENDANT PRESENTED AT THE HEARINGS OF THE WITHIN CAUSE.

[11] CERTIFICATE

And the foregoing were all of the proceedings on the motions and demurrer of the defendant in the above-captioned case.

And the Court having overruled said motions and demurrer, as appears of record herein,

Now comes the defendant, by his counsel, and within the time provided by law, files this, his Bill of Exceptions, the same having been filed with the Clerk of this Court within the time provided by law for the filing of same, and asks that the same may be certified by the Court as containing all of the proceedings relative to defendant's motions to dismiss and demurrer, and asks that the same may be allowed, settled, signed and made a part of the record herein, all of which is accordingly done.

WITNESS the hand of this Court this ..... day of ....., 1968.

.....
Rupert A. Doan, Judge
Hamilton County Municipal Court

.....
Joseph A. Luebbers, Judge
Hamilton County Municipal Court

APPENDIX C

BILL OF EXCEPTIONS – HASTINGS

STATE OF OHIO
HAMILTON COUNTY MUNICIPAL COURT

No. 7857
No. 7858
No. 7859
No. 7860

CITY OF CINCINNATI,
Plaintiff,

vs.

JAMES HASTINGS,
WENDELL SAYLOR,
ARNOLD ADAMS
CLIFFORD WYNER,
Defendants.

BILL OF EXCEPTIONS

BE IT REMEMBERED that on Tuesday, April 23, 1968, at 9:45 A.M., before the Honorable Joseph A. Luebbers, one of the Judges of the Hamilton County Municipal Court, the above-captioned cases came on for trial.

APPEARANCES:

On behalf of Plaintiff:
Wallace Holzman, Esq.
Assistant City Prosecutor

On behalf of Defendants:
Bernard C. Fox, Esq.
of
Beckman, Lavercombe, Fox & Weil

[2] MR. HOLZMAN: There is a jury waiver and withdrawal of demand for jury, and all of the defendants have been advised of their constitutional rights, but they have decided to waive their rights to trial by jury and have the Court hear the facts and determine the issues of law. Mr. Fox, what is the plea?

MR. FOX: I will make a motion first, to dismiss. I want to raise the constitutionality of the ordinance. I have argued it to the Court before, Your Honor; it is on appeal and will be argued in the Court of Appeals in June, and I don't think it is necessary for me to cite the usual authorities and all that.

THE COURT: No; they may be added in the record, if you would like. The motion will be overruled.

MR. FOX: The plea is not guilty.

MR. HOLZMAN: The plea is not guilty. Will all witnesses please come forward and be sworn.

(Thereupon the plaintiff presented its evidence.)

MR. HOLZMAN: We rest, Your Honor.

MR. FOX: I move to dismiss.

(Argument by Mr. Fox in support of motion and by Mr. Holzman in opposition to motion.)

THE COURT: The motion will be overruled.

(Thereupon the defendants presented their evidence.)

[3] MR. HOLZMAN: I will waive opening or closing argument.

(Further argument by Mr. Fox and Mr. Holzman.)

THE COURT: It is true in picketing probably that could be annoying to some people along the way, and in all probability it is, but that in itself does not bring it within the scope of any of the ordinances, because it happens to annoy someone. However, when you are blocking either an occupant of the building or someone trying to get in, that's a different situation, and if they ask you to move and say "Don't block the truck," then, of course, you should move and continue your picketing after the truck has either entered or departed.

The finding of the Court is guilty. Costs on each.

MR. FOX: May we have a stay?

THE COURT: Sure.

MR. FOX: Thirty days?

THE COURT: All right.

MR. FOX: I think there is a bond here.

THE COURT: 5/23, same bond, if there is one. Is there a bond?

MR. FOX: I think there is.

MR. HOLZMAN: Yes.

[4] THE COURT: I think they are O.R.s. All members of the community, all living in the city?

MR. FOX: Yes.

THE COURT: O.R. No bond. Costs remitted on all except Hastings.

AND THE FOREGOING WAS ALL OF THE PROCEEDINGS RELATIVE TO THE MOTIONS OF THE DEFENDANTS PRESENTED AT THE HEARINGS OF THE WITHIN CAUSE.

[5] CERTIFICATE

And the foregoing was all of the proceedings on motions of defendants to dismiss, in the above-captioned cases.

And the Court having overruled said motions, as herein set forth,

Now come the defendants, by their counsel, and within the time provided by law, file this, their Bill of Exceptions, the same having been filed with the Clerk of this Court within the time provided by law for the filing of same, and ask that the same may be certified by the Court as containing all of the proceedings relative to defendants' motions to dismiss, and ask that the same may be allowed, settled, signed and made a part of the record herein, all of which is accordingly done.

WITNESS the hand of this Court this ..... day of October, 1968.

.....
Judge
Hamilton County Municipal Court
State of Ohio

APPENDIX D

APPELLANTS' ASSIGNMENTS OF ERROR, STATE APPELLATE COURT

COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO

CITY OF CINCINNATI
Plaintiff-Appellee

vs.

DENNIS COATES — No. 10703
Defendant-Appellant

JAMES HASTINGS — No. 10707
Defendant-Appellant

WENDELL SAYLOR — No. 10706
Defendant-Appellant

ARNOLD ADAMS — No. 10704
Defendant-Appellant

CLIFFORD WYNER — No. 10705
Defendant-Appellant

APPELLANT'S ASSIGNMENT OF ERROR AND BRIEF

BECKMAN, LAVERCOMBE,
FOX & WEIL
By: Bernard C. Fox
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Attorneys for Defendants-
Appellants

Simon L. Leis, Jr.
Assistant City Prosecutor
City of Cincinnati
Attorney for Plaintiff-Appellee

INDEX

AUTHORITIES CITED

[1] STATEMENT OF THE CASE

All of these cases were tried in the Cincinnati Municipal Court. All of them involve the "Loitering" ordinance of the City of Cincinnati. The defendants in all of these cases filed motions to quash and demurrers attacking the sufficiency of the affidavits. All of these motions and demurrers were overruled. All of the defendants made oral motions to dismiss on the constitutionality of said "Loitering" ordinance. These motions were overruled. There-

after, the City presented testimony on its behalf. The defendants offered no evidence and rested at the completion of the City's case. The defendant in each of these cases was found guilty and sentence was pronounced. Thereafter, each of the defendants filed a motion for new trial which was overruled and thereupon filed their notices of appeal to this Court.

[2] QUESTIONS PRESENTED

QUESTION NO. 1

In all of these cases there is raised the question of whether or not the "Loitering" ordinance of the City of Cincinnati violates the First Amendment and the Fourteenth Amendment of the Constitution of the United States and Section 3, Article I of the Ohio Constitution.

QUESTION NO. 2

In the cases of DENNIS COATES and JAMES HASTINGS, the question of the sufficiency of the affidavit to charge a crime is raised. The question of the sufficiency of the affidavits in the cases of WENDELL SAYLOR, ARNOLD ADAMS and CLIFFORD WYNER is hereby waived.

[3] FIRST ASSIGNMENT OF ERROR

The Court erred in each of these cases and in overruling the defendants motions to dismiss each of the defendants on the basis that the "Loitering" ordinance of the City of Cincinnati was unconstitutionally under the United States Constitution and the Constitution of the State of Ohio.

SECOND ASSIGNMENT OF ERROR

In the cases of DENNIS COATES and JAMES HASTINGS, the Court erred in overruling the motions to quash of the defendants and the demurrers of the defendants.

[4] ARGUMENT

FIRST QUESTION:

The defendants were convicted violating an ordinance of the City of Cincinnati, Section 901-L 6. The ordinance is entitled "Loitering at Street Corners". The text of the ordinance is as follows:

> 'It shall be unlawful for three or more persons to assemble, except at a public meeting of citizens, on any of the sidewalks, street corners, vacant lots, or mouths of alleys, and there conduct themselves in a manner annoying to persons passing by, or occupants of adjacent buildings. Whoever violates any of the provisions of this section shall be fined not exceeding fifty dollars ($50.00), or be imprisoned not less than one (1) nor more than thirty (30) days or both.'

The conduct prohibited by this ordinance is so vague and imprecise that a person is unable to determine what conduct, in which he may be engaged, will later be construed to be "annoying to persons passing by, or occupants of adjacent buildings." Various standards and levels of annoyance may, and certainly do, prevail from person to person and from group to group. Accordingly, no standard is established by which a person may know what conduct is annoying to passers-by or occupants of adjacent buildings. The determination can only be made when the passer-by or occupier of adjacent buildings claims to be annoyed and causes an arrest.

[5] There have been numerous cases striking down ordinances of the nature of the Cincinnati "Loitering" ordinance. These ordinances are far more precise than the one in question. A Toledo, Ohio, ordinance virtually identical with the ordinance in question was declared unconstitutional in the case of *City of Toledo* v. *Sims* 14 O.O. (2d) 66. One of the reasons for the unconstitutionality of the ordinance was the failure to lay down any rules or standards.

Guyot v. *Pierce* 372 F 2d 658 (5CCA) decided February 1967, found that the Municipal Ordinance in which the test was "distracting activity" was unconstitutional in that it did not define what constituted "distracting activity". Nowhere in the ordinance in question is there a definition of "annoying".

In *Carmichael* v. *Allen* 267 F. Supp. 985, decided in March of 1967, the District Court at Atlanta, Georgia ruled that an ordinance making it unlawful for a person to act in a violent, turbulent, quarrelsome, boisterous, indecent or disorderly manner or to use profane, vulgar or obscene language, or to do anything tending to disturb the good order, morals, peace or dignity of the city, was unconstitutional as restricting speech or the right of peaceful assembly.

The case of *Baker, et al.* v. *Binder, et al.* 274 F. Supp. 658, was decided in October of 1967. The Court in this case struck [6] down certain statutes of Kentucky and ordinances in the City of Louisville on constitutional grounds. As an example, the Kentucky statute found unconstitutional, read as follows: (P. 661):

> "No two or more persons shall confederate or band themselves together and go forth for the purpose of intimidating, alarming, disturbing or injuring any person, or of taking any person charged with a pub-

> lic offense from lawful custody with a view of inflicting punishment on him or of preventing his prosecution or of doing any felonious act."

In finding the statute unconstitutional, the Court said,

> "This statute makes *it a crime for two or more persons to go forth together for the purpose of disturbing another person.* It is not limited in its applicability to violent conduct on the part of the offender. It appears written as embracive of terms of expression and *is susceptible of being read to include such functions as peaceable assembly.*" (Emphasis added)

The Court recognized that a criminal penalty for "disturbing" someone would leave open the standard of responsibility and involve "calculations" as to the boiling point of a particular person. The Court also struck down the Kentucky "vagrancy" statute saying,

> "It does not give fair notice, it is arbitrary as to its standards and is grossly susceptible of overreaching federal constitutional guarantees by lending itself for ready use by officials against those deemed to merit their displeasure."

[7] In finding the City of Louisville disorderly conduct ordinance unconstitutional, the Court said (p. 663),

> "It leaves to the Executive and Judicial branches too wide a discretion in the application of the law and too readily permits them to make a crime out of what is protected activity."

Recently, the Court of Appeals of Cuyahoga County in the case of *Cleveland* v. *Anderson* 13 O.A. 2d 83, found that a Municipal ordinance which forbids any one from making himself a part of any noisy, boisterous or disorderly disassembly of persons countenancing the same by his

presence, which annoys the inhabitant of the city or any participant thereof, constitutes an unreasonable infringement the right of free assembly as guaranteed by the First Amendment of the United States Constitution in Section 3, Article I of the Ohio Constitution. The Court further found that the due process clause of the Fourteenth Amendment to the United States Constitution is violated when a Municipal ordinance prohibiting participation in a disorderly assembly is written in terms so vague that neither the police nor a citizen can ascertain what exact conduct is proscribed.

The Court, at page 90, said,

> "With little effort, one can imagine many 'noisy or boisterous' assemblages which, at various times, might annoy some persons in the city of Cleveland. Anyone could become an unwitting participant in a disorderly assembly and suffer the penalty consequences. * * * Neither the police [8] nor a citizen can hope to conduct himself in a lawful manner if an ordinance which is designed to regulate conduct does not lay down ascertainable rules and guidelines to govern its enforcement. This ordinance represents an unconstitutional exercise of the police power of the city of Cleveland and is therefore void."

All of the shortcomings that the Cuyahoga County Court of Appeals found in the Cleveland ordinance are found in the Cincinnati ordinance and more so.

SECOND QUESTION :

The affidavit in the case of DENNIS COATES, is as follows:

> "Thomas J. Martin, being first duly cautioned and sworn, deposeth and said that one DENNIS COATES, on or about the 7th day of December, 1967, at and

> in the City of Cincinnati, County of Hamilton, and State of Ohio, did Unlawfully *Loiter* on the sidewalk at 500 Main with 6 other persons and there did conduct himself in a manner annoying to persons passing by, Contrary to and in violation of Section 901 – L 6 of the code of Ordinances of the City of Cincinnati." (Emphasis added)

[9] The body of the ordinance of the City of Cincinnati reads as follows:

> "It shall be unlawful for three or more persons to assemble, except at a public meeting of citizens, on any of the sidewalks, street corners, vacant lots, or mouths of alleys, and there conduct themselves in a manner annoying to persons passing by, or occupants of adjacent buildings. Whoever violates any of the provisions of this section shall be fined not exceeding fifty dollars ($50.00), or be imprisoned not less than one (1) nor more than thirty (30) days or both.

DENNIS COATES is not charged with assembly as required by the ordinance but rather he is charged with unlawful loitering. "Loitering" is defined as follows:

> 'Consume time idly; to linger along the way; spend time idly; be dilatory; delay'.

"Assemble" is defined as follows:

> 'To bring together; gather into a place; to come together'.

Nothing in the definition of "loiter" includes the word "assemble" or vice versa. A material element of the offense as defined by the ordinance of Cincinnati is omitted from the affidavit and such omission is fatal to its validity. *State* v. *Cimpritz,* 158 Ohio St. 490. That case dealt with a fatal defect in an indictment. The same principals are applicable to an affidavit in a misdemeanor. *State*

v. *Latham* 120 Ohio App. 176. The indictment in this [10] case does not charge DENNIS COATES with assembling and therefore omits a material element of an offense

With respect to the affidavit charging JAMES HASTINGS with a crime, it reads as follows:

> "Pat'n Hochstrasser, being first duly cautioned and sworn, deposes and says that James Hastings being one of a group of more than two persons assembled on the sidewalk on or about April 11, 1968, at and in the City of Cincinnati, Hamilton County and State of Ohio, did unlawfully conduct himself in a manner annoying to persons passing by contrary to and in violation of Section 901 — L 6 of the Code of Ordinances of the City of Cincinnati".

The ordinance prohibits three or more persons to assemble and conduct *themselves* in an annoying manner. It fails to charge that the group was conducting *themselves* in an annoying manner, but limits it to JAMES HASTINGS conduct by charging "himself" with annoying conduct.

[11] CONCLUSION

This Court should declare the ordinance in question unconstitutional and reverse the convictions of the defendants in all these cases. Furthermore, it is obvious that the affidavits as to JAMES HASTINGS and DENNIS COATES are defective since they omit necessary elements of the crime, and should be dismissed for this reason.

Respectfully submitted,

/s/ BERNARD C. FOX
Bernard C. Fox
1714 First National Bank Building
Cincinnati, Ohio 45202

APPENDIX E

NEWSPAPER ARTICLE, CINCINNATI POST & TIMES STAR

August 19, 1968

Conviction of Lathan Johnson, who was charged with loitering while urging Avondale residents to get off the streets during the June 13, 1967, riot, was reversed today.

Three out-of-town judges sitting as the Ohio Court of Appeals reversed the conviction on "a failure of proof" of violation of the loitering ordinance.

JUDGE ARTHUR W. Doyle of Akron, who wrote the opinion, said that, "while we have grave doubts of the constitutionality of this ordinance, we prefer not to pass upon the question in this case."

Johnson attorney, Robert R. Lavercombe, based the appeal mainly on the alleged unconstitutionality of the ordinance. The appeal had been considered locally as a test case of the ordinance.

The court held that, "The evidence does not establish the fact that he, as a part of the lawless group, annoyed anyone, except perhaps the officer who made the arrest after the crowd was dispersed.

"IT MAY BE fary [sic] said that the unruly mob of persons did conduct themselves in such a manner as to violate the language of the ordinance. However, to find this appellant (Johnson) a part of the mob would require this court to say he was guilty by association only. This doctrine has no place in this case."

At the time of his arrest, Johnson was assistant director of the Greater Cincinnati Federation of Settlements and Neighborhood Centers. He has been living for the past

year in Boston where he is studying for a doctorate degree at Brandeis University.

JOHNSON was convicted after pleading innocent, by Judge William S. Mathews in Police Court Sept. 7, 1967. He was sentenced to 30 days in the Workhouse and fined $50 and costs.

Johnson was arrested shortly after midnight, during the 1967 riot, near Rockdale and Burnet avenues by Patrolman Melvin Thurman. Thurman testified that he and other police had ordered the crowd there to disperse and that all but Johnson obeyed.

APPENDIX F

FINAL ORDER, OHIO SUPREME COURT

This Appendix is pursuant to Rule 15 (1)(i).

THE SUPREME COURT OF THE STATE OF OHIO

1970 TERM

To wit: January 28, 1970

Nos. 69-116, 69-117, 69-118, 69-119 and 69-120

THE STATE OF OHIO,
City of Columbus.

CITY OF CINCINNATI,
Plaintiff-Appellee,

vs.

DENNIS COATES,
JAMES HASTINGS,
WENDELL SAYLOR,
ARNOLD ADAMS, and
CLIFFORD WYNER,
Defendants-Appellants.

APPEALS FROM THE COURT OF APPEALS

for HAMILTON *County*

These causes, here on appeals from the Court of Appeals for Hamilton County, were heard in the manner

prescribed by law. On consideration thereof, the judgments of the Court of Appeals are affirmed; for the reasons set forth in the opinion rendered herein, and it appearing that there were reasonable grounds for this appeal, it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the CINCINNATI MUNICIPAL COURT to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for HAMILTON County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this 28 day of January 1970.

/s/ .....Clerk

/s/ .....Deputy